



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: June 7, 2022

TO: Mayor and Councilmembers

FROM: Daniel S. Hentschke, Assistant City Attorney
Clifford M. Maurer, Public Works Director

SUBJECT: Continued Public Hearing To Consider Declaration Of A Public Nuisance Resulting From The Operation Of A Drive-Through Facility Located At 3707 State Street

RECOMMENDATION: That Council:

- A. Adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Approving a Traffic Circulation Agreement to Remedy Nuisance Related Issues Arising from the Operation of a Drive-Through Facility Located at 3707 State Street.
- B. Rescind direction to the City Attorney to prepare an ordinance declaring the existence and ordering the abatement of a public nuisance resulting from the operation of a drive-through facility located at 3707 State Street.

ALTERNATIVE ACTION That Council:

Introduce and subsequently adopt, by reading of title only, an Ordinance of the Council of the City of Santa Barbara Declaring the Existence and Ordering the Abatement of a Public Nuisance Resulting from the Manner of Operation of a Drive-Through Facility Located at 3707 State Street as attached to the Council Agenda Report submitted by the City Attorney.

DISCUSSION:

At the Council's March 1, 2022 public hearing, Council directed four specific actions:

1. Continue the public hearing to June 7, 2022 following supplemental notice to the property owners.

2. Direct the City Attorney to prepare a draft ordinance with nuisance findings based upon Council's comments and the evidence presented, and return with the ordinance on June 7th.

3. Staff are to work with Chick-fil-A and the property owners to develop potential remedies and return with remedial recommendations on June 7th.

4. On or before March 11, Chick-fil-A is to send a letter with proposed interim traffic control actions and report monthly on traffic monitoring information.

On March 11, 2022, Counsel for Chick-fil-A provided the letter outlining its interim traffic control actions. Chick-fil-A has also provided monthly traffic reports and other traffic monitoring information. On March 15, 2022, the City Attorney provided written notice as required by law to the property owners who claimed they did not receive formal notice previously.

Chick-fil-A has implemented the interim traffic control actions outlined in the March 11 letter. Based on the traffic monitoring reports and staff's observations, the measures have been successful in eliminating the chronic nuisance activity that staff described during the March 1, 2022 public hearing. Also, staff and Chick-fil-A have worked diligently to process a Site Improvement Application for improvements to onsite traffic circulation, including widening the driveway to accommodate customers who wish to by-pass the drive through lanes. The City Attorney's Office has previously determined that the proposed site improvements, including the drive-through configuration and site plan are consistent with and not an expansion of the existing nonconforming use.

Staff and Chick-fil-A have negotiated a Traffic Circulation Agreement which they believe is the most effective and least burdensome approach to improving traffic conditions at 3707 State Street and to abate any alleged traffic nuisance arising from the operation of the drive-through facility at that location. A copy of the Traffic Circulation Agreement is attached to this report. All Chick-fil-A related parties and the owners of 3707 State Street have approved the agreement, subject to approval by the City Council.

The Traffic Circulation Agreement has three primary purposes:

- Stay the nuisance proceedings. The Agreement provides that the nuisance proceedings commenced pursuant to City Council Resolution No. 22-008 and continued to this meeting would be stayed indefinitely to allow for implementation of the Agreement. Nuisance proceedings could be recommenced if there is a material breach of the Agreement upon notice as provided in the Agreement.
- Establish operational requirements. The Agreement incorporates the March 11, 2022 interim traffic control action. The Agreement requires both parties to act reasonably and in good faith to obtain final approval of site modifications to improve traffic circulation. However, the Agreement does not waive or limit any

discretionary authority or CEQA requirements. The interim traffic control measures will remain in effect until Final Approval of the Site Improvement Application as described in the Agreement. After Final Approval, there are permanent traffic control actions as set forth in Section II. B. 3. of the Agreement. The traffic control measures identified in the Agreement are legally enforceable contractual obligations.

- Terminate the nuisance proceedings upon successful implementation of the proposed site improvements. If Chick-fil-A meets its obligations under the Agreement as determined by the Public Works Director, then the nuisance proceedings that were initially commenced under Resolution No. 22-088 will be deemed terminated 6 months after implementation of the proposed site improvements. After the nuisance proceedings are deemed terminated, the Agreement is enforceable by legal action or by the initiation of new nuisance abatement proceedings.

Staff believes that the Traffic Circulation Agreement is in the best interest of the City because it will: (1) implement Council's direction of March 1, 2022; (2) facilitate the implementation of site improvements to improve traffic circulation at 3707 State Street; (3) provide enforceable traffic control measures to be implemented by Chick-fil-A on an interim and permanent basis; (4) abate any alleged traffic nuisance arising from the operation of the drive-through facility at 3707 State Street; (5) avoid the time, expense, and uncertainty of ongoing nuisance abatement proceedings.

Therefore, staff is recommending adoption of the proposed resolution approving the Agreement and authorizing its execution by the City Administrator. The proposed resolution also rescinds the prior Council direction for the City Attorney to prepare an ordinance. In the alternative, as directed, the City Attorney has prepared a nuisance abatement ordinance for Council's consideration. The ordinance accompanies the separate agenda report submitted by the City Attorney for this item. If Council approves the Traffic Circulation Agreement and proposed resolution as recommended by staff, it is unnecessary to consider the draft ordinance.

ATTACHMENT: Traffic Circulation Agreement

PREPARED BY: Daniel S. Hentschke, City Attorney

SUBMITTED BY: Clifford M. Maurer, Public Works Director
Daniel S. Hentschke, Assistant City Attorney

APPROVED BY: City Administrator's Office